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SUBJECT: NIGER EXPROPRIATES TELEPHONE UTILITY SONITEL

11. SUMMARY: On February 12, the Government of Niger (GON) unilaterally announced a decision to reduce the term of the operating license of the country's privatized telecoms provider SONITEL, effectively ending the management of Dataport LTD, the foreign-owned consortium that had purchased 51% ownership in 2001. The GON has not announced what compensation, if any, will be paid to Dataport shareholders. End summary.

12. In November 2001, the GON sold a controlling interest (51%) in Sonitel, the state-owned telephone company, to Dataport Ltd, a Chinese-Libyan joint venture. The Chinese partner, ZTE, provided equipment and technology while the Libyan partner had managed the company since 2001.

13. When privatized, the company had approximately 20,000 subscribers, 25,000 lines, 2,500 cellular phone accounts, 1,500 internet customers, 150 telex and 200 specialized lines. The terms of the privatization granted SONITEL a monopoly on international communications, including both voice and data, in exchange for an aggressive capital investment program to improve quality and access. The Dataport LTD consortium claims to have invested approximately USD 80 million in upgrading SONITEL systems but the number of new fixed lines is less than stipulated in the terms of reference. The contract stipulated installation of 75,000 fixed lines by 2004, but only 70,000 were in service at the end of 2008. (Comment: Cellular service, an area in which SONITEL does not have a monopoly, has shown far more robust growth in Niger than fixed line service. End comment.)

14. SONITEL's union employees have never been happy with the privatization. In a 2004 interview, the secretary general of the union claimed that the equipment provided by the Chinese partner was of poor quality. Since then, the union has called several strikes to protest deterioration of working conditions and demand that the GON withdraw the license from Dataport. The National Assembly conducted an inquiry into SONITEL operations and called on the GON to rescind Dataport's license. The GON had given notice to the Chinese/Libyan Joint venture that they should come into compliance with the terms of reference. According to the Minister of Communications, SONITEL and SahelCom (the mobile company) received seven formal notifications of non-performance from the Regulatory Multi-sectoral Authority (RMA) between 2004 and 2007.

15. The exact terms of the privatization agreement are not clear, but the GON claims to have retained the right to withdraw the license if Dataport failed to hold its part of the bargain. However, the GON had not initiated any legal process to regain majority ownership of SONITEL by February 12, when it unilaterally announced a decision to reduce Dataport LTD's license from the original 15-year term to seven years and two months. From February 20, SONITEL and its subsidiary SahelCom would belong to the GON. The GON announcement was silent on the issue of compensation for the joint venture partners.

¶6. The GON has not yet announced whether it will reimburse the Dataport partners for the capital invested in SONITEL or will withdraw the license without any compensation. Dataport has made no formal announcement, but is believed to be preparing a lawsuit challenging the GON actions. Despite general appreciation that failure to provide compensation would have a negative effect on future efforts to attract foreign investment, Nigerien policy makers have yet to express concern about the lack of legal process in this case.

¶7. Minimize considered.

ALLEN